IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WP(C).No. 26266 of 2007(B)

PETITIONER:

V.J.JOSEPH @ JOHNY, AGED 56 YEARS,
S/O. LATE ULAHANNAN, VATHELIL,
SOUTH MARADY P.O., MUVATTUPUZHA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:
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1. MARADY GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, S.MARADY P.O.,
MUVATTUPUZHA (VIA).

2. THE SECRETARY,
MARADY GRAMA PANCHAYAT, S.MARADY P.O.,
MUVATTUPUZHA (VIA).

3. JACOB M.JOHN, AGED 49 YEARS,
S/O. JOHN, MANITHOTTATHIL, MARADY.

BY ADV. SRI.VARGHESE C.KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(c).No.26266 OF 2007

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Dated this the 25th day of October , 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is conducting a pig farm in the property belonging to him and his wife. Third respondent is a neighbor of the petitioner who is on inimical terms with the petitioner, it is stated. The farm is being continued for the last 8 years without any objection or complaints. There are 15 pigs in the farm including two pregnant pigs. Petitioner challenges Exts.P1 and P5. He seeks a direction to declare that he is entitled to conduct pig farm referred to in Exts.P1 and P5 without any interference from respondents. A direction is also sought to the respondents not to interfere with the petitioner's pig farm mentioned in Exts.P1 and P5. According to the petitioner, The Kerala Panchayat Raj (Licensing of Pigs and Dogs) Rules 1998 deals with licensing and conduct of pig farms.

2. Counsel for the petitioner contends that with reference to Rule 4, Panchayat has not taken a proper decision by a

resolution specifying that persons residing within the territorial limits of the Panchayat should take a licence for rearing or keeping pigs or dogs. It is the case of the petitioner that records are created by the first respondent to the effect that a resolution is passed in this regard. He further submits that Kerala Panchayat Raj (Procedure for Panchayat Meeting) Rules 1995 has been violated in so far as the decision has not been published or brought to the notice of the public by a pamphlet as required in Rule 3 of the Kerala Panchayat Raj (Licensing of Pigs and Dogs) Rules 1998. He further contends that there are 12 pig farms including that of one Varghese Kurissingal within the territorial limits of the Panchayat. Petitioner was called upon to remove the pigs by Ext.P1. It is his case that on receipt of Ext.P1 he met the second respondent and requested to issue him with a licence if any licence is required. There is refusal to accept the application. Petitioner submitted Ext.P2 application and Ext.P3 representation. He has not been informed about the fate of Ext.P3. Case of the petitioner is that Ext.P3 is issued without hearing him. Petitioner had filed a writ petition earlier. Therein a counter affidavit is filed and the relevant portion of the same is produced as Ext.P4. Petitioner relies on that to show that the first respondent has not

published any pamphlet to inform the public about the necessity of obtaining licence. It is stated that though a report was filed by the health inspector which is favourable, it is suppressed. The writ petition was disposed of directing the first respondent to consider Ext.P2. Thereupon petitioner has been served with Ext.P5 order dated 25/08/2007.

3. Counter affidavit is filed by respondents 1 and 2. Ext.R1(a) is the order rejecting the application of the Petitioner. It is stated that proper remedy is to file an appeal. Ext.R1(b) is the copy of the decision taken by the Panchayat and the public notice. It is stated that petitioner is illegally continuing the pig farm without a licence. Para 6 and 7 of the counter affidavit are extracted hereunder:

> " The minimum requirement is that there should be pigs tie, maintained with septic tank, bio-gas pump and Air Pumb. The waste materials of Hotel, and the decade vegetables from the market etc... on the food's given to pigs. The same may cause health hazard, if there is no clearances. Hence there should be a approved covered shed, septic tank, for waste to be dumbed and Air Pipe (to remove the bad smell) and bio-gas pumb. The petitioner does not have a fully covered shed, nor

septic tank or any basis infrastructure, for pig farm.

First of all, there should be a site plan. The same should be approved by the DMO and NOC to be obtained. There should be no residential building or house within 100 metres. But if there is a house, the Non Objection Certificate of those persons to be obtained. The Mosquito Net has to be provided to avoid the fly and Mosquito. After complying all these formalities, the application should be submitted under Rule 4, for each pigs. None of the condition followed and hence the application of petitioner is rejected."

5. It is stated that Ext.R1(c) is the detailed complaint by the residents of the locality against the petitioner which is forwarded to the inspector who has submitted Ext.R1(d) report.

6. Reply is filed, wherein of course the petitioner relies on the decision reported in **Thomas Paul and Another v. State of Kerala** (2006(3)KLJ 777). It is stated that petitioner is prepared to take further steps to avoid the complaint or nuisance if any.

7. Additional counter affidavit is filed, wherein Ext.R1(e) purporting to be the copy of the communication dated 25/08/2007 is produced. Ext.R1(f) purports to be the register

records produced to show that Ext.R1(a) was sent on 30/08/2007.

8. Additional reply affidavit is filed by the petitioner. Therein, after raising certain conditions against Ext.R1(e) and R1 (f), petitioner proceeds to say that without prejudice to the contentions in the writ petition, petitioner is prepared to shift the pig farm to another portion of his property and to take sufficient safe guards to avoid any nuisance to others if the Panchayat is prepared to grant licence for the farm. It is also stated that this submission is being made maintaining his contentions raised in the writ petition and with a view to have an amicable settlement of disputes bonafidely believing that first respondent will grant necessary licence if required.

9. I heard learned counsel for the parties. I am not inclined to interfere with Exts.P1 and P5. Admittedly the application of the petitioner has been rejected by the Panchayat by Ext.R1(a). I am not at all impressed by the contention of the petitioner that there is no resolution passed by the Panchayat within the meaning of Rule 3. In view of the specific provision contained in the Rules regarding the manner of publication of notice, petitioner cannot be permitted to invoke the said provisions. It may be true that petitioner has not been served

with a copy within 3o days. The application is dated 28/07/2007. Case of the petitioner on the basis of Section 236(3) of the Panchayat Raj Act that in view of the fact that the decision rejecting the application was not communicated within 30 days of the filing of the application, petitioner must be a deemed licensee does not appeal to me much. It is to be noted that admittedly the application of the petitioner was actually received by them on 31/07/2007. A decision is taken as Ext.R1(a) on 25/08/2007. But according to the petitioner, it is not communicated to him within 30 days. It is also pointed out that there are no documents to show that it is communicated within 30 days. Even proceeding on the basis that respondents have communicated the decision rejecting the application beyond 30 days, the decision appears to be one rejecting the application. However, I do not propose to decide this case on the said basis having regard to the fact that the petitioner himself proposes shifting. I feel that petitioner can be given some time for shifting. Though petitioner has shifted the major pigs, some time may be required to shift the remaining pigs. It is submitted by the counsel for the petitioner that some time may be required to construct the structure and since it is in the midst of the rainy season, construction may take some time.

It is pointed out by the counsel for the respondent that in fact shifting is already over.

Having regard to all facts, I feel that petitioner can be given five week's time from today for shifting the entire pig farm. It is for the petitioner to make appropriate application as required in law before the respondent-Panchayat for consideration of the grant of requisite permission in law. For a period of five weeks from today, in order to enable the petitioner to facilitate complete shifting, Ext.P5 order shall not be implemented in so far as the pigs remaining as on today.

(K.M.JOSEPH, JUDGE)

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